

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

El Paso, Texas

EL PASO ELECTRIC COMPANY

Employer

and

Case No. 16-RC-10572

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 960

Petitioner

DECISION AND DIRECTION OF ELECTION

The International Brotherhood of Electrical Workers, Local 960 filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full-time and regular part-time customer service representatives currently employed by El Paso Electric Company at the telephone center located at 100 N. Stanton, El Paso, Texas. The Petitioner's proposed unit consists of approximately 35 employees classified as customer service representative I, customer service representative II, customer service representative III, and customer service representative-clerk-telephone center. The Petitioner seeks to exclude office clerical employees, professional employees, guards and supervisors as defined in the Act and all other employees. In addition, the Petitioner seeks a self-determination election pursuant to the Board decisions in *Armour & Co.*, 401 NLRB 1333 (1942) and *The Globe Machine & Stamping Co.*, 3 NLRB 297 (1937).

The Employer contends that the Petitioner's proposed unit is inappropriately narrow and would result in a fragmentation of its systemwide customer care operations. The Employer argues that any unit found appropriate must include all systemwide employees engaged in

customer care activities including the petitioned-for employees and (1) a staff assistant-customer operations located at the 100 N. Stanton facility, (2) twenty-seven customer service employees, including two lead personnel, located in outlying offices, (3) two customer resource unit employees, and (4) ten revenue collection employees. The Employer argues that the petition should be dismissed because the Petitioner has made no alternative request for a broader unit. In the alternative to dismissal of the petition, the Employer contends that any unit found appropriate should be a distinct, separate unit from any existing unit currently represented by the Petitioner.¹ The Employer contends that an *Armour-Globe* election is not appropriate because the Petitioner has failed to petition for a unit that encompasses all employees of the type described in the petition. A hearing officer of the Board held a hearing and the parties filed briefs with me.

Based on the record evidence, I conclude that the petitioned-for unit is inappropriate as it excludes employees who share such a substantial community of interest with the petitioned-for employees so as to mandate their inclusion in the appropriate unit. In addition to the petitioned-for employees, I find that the appropriate unit must include all customer service representatives, including lead persons, employed by the Employer at its outlying offices. I will exclude the staff assistant-customer operations, the two customer resource unit employees, and the ten revenue collection employees. I further conclude that an *Armour-Globe* or self-determination election is inappropriate as the petitioned-for unit does not constitute an appropriate residual unit inasmuch as only a portion of the remaining unrepresented customer service employees are sought by the Petitioner. The factual basis and analysis for these findings follow below.

¹ At the hearing, the Employer objected to the proposed unit as an effort by the Petitioner to seek an “accretion” to the existing unit. In its brief, the Petitioner argues that an accretion is distinguishable from a self-determination election because in an accretion employees are not offered the opportunity to select a bargaining representative through an election. In an accretion, the existing unit is clarified to include the additional employees. The Petitioner argues that it has requested a self-determination election not an accretion. The record establishes, and I find, that the Petitioner is seeking a self-determination or *Armour-Globe* election.

STATEMENT OF FACTS

The Employer is a public utility corporation that generates, transmits and distributes electricity to consumers in Texas and New Mexico. The Employer is a highly structured organization headed by a board of directors and a chief executive officer/president. Below the top tier, the organization is divided into six areas each headed by its own vice-president, official or president. Each area is further composed of numerous departments headed by a director, manager or supervisor as the case may be.

T. Basham, executive vice-president-chief financial and administrative officer, heads one of the six areas. Basham's area is structured into four departments including ones headed by K. Lore, vice-president of administration, and S. Wilson, controller. Lore's administration department comprises seven groups including customer operation services (Manager Eduardo Valdez), customer services outlying offices (Manager Judy Kummrow) and customer tech resource unit (Supervisor D. Sanchez). With the exception of the ten revenue collections representatives, all of the at-issue employees in this proceeding fall under Valdez, Kummrow or Sanchez.

Under Controller Wilson, the structure is broken into five areas including tax, revenue collection, billing, accounting services and payroll. These areas are primarily accounting in nature and neither party contends that the tax, billing, accounting services or payroll personnel should be included in the appropriate unit. However, the Employer contends that the ten revenue collection employees perform customer care activities and share such a substantial community of interest with the petitioned-for employees so as to mandate their inclusion in any appropriate unit. B. Kilgore is the supervisor over revenue collections.

History of Collective Bargaining

Although the at-issue employees in this proceeding are not represented by a union, the parties have a long history of collective bargaining and stipulated that the Petitioner currently represents approximately one-third of the Employer's workforce and has been a party to successive collective bargaining agreements since 1944. This bargaining unit is comprised primarily of linemen, power plant and substation personnel who work in various locations throughout Texas (El Paso, Fabens, Van Horn, and Sierra Blanca) and New Mexico (Anthony, Hatch and Las Cruces).

The record disclosed that on or about April 22, 2002, the Petitioner filed petition 16-RC-10418 seeking to represent a systemwide unit of the Employer's employees classified as, *inter alia*, customer service, meter readers/collectors, and facility services. On or about June 13, 2002, a Certification of Results issued. In 2003, the Petitioner filed two separate petitions (16-RC-10523 and 16-RC-10525) seeking to represent employee groups previously involved in the 2002 election. Certification of Results issued in units including the meter reading/collections group located in El Paso and Las Cruces and the facility services group adding these groups to the existing unit. All of the above elections were conducted pursuant to *Armour-Globe*.

Telephone Center

The Employer maintains a telephone center located at 100 N. Stanton in El Paso. Eduardo Valdez is the manager over the telephone center. The telephone center is primarily composed of customer service representatives who provide a variety of customer services, through telephone and personal contacts, such as handling requests, inquiries and complaints regarding bills and services and cashiering. Customer service representatives are classified as I, II or III with the primary difference being pay grade. Telephone center customer service representatives primarily communicate with customers via the telephone. Although a majority of

the customer service representatives work at the telephone center, six representatives work from home and are known as home agents. It is this group of customer service representatives I, II and III, including the home agents, that the Petitioner seeks to include in the unit.

The Petitioner's proposed unit would also include one to three employees classified as customer service representative-clerk-telephone center. These employees provide support to the telephone center and are responsible for the ongoing maintenance of the department's central files, and preparation and distribution of the telephone center's periodic productivity reports. Other duties include relieving the central telephone operator during absences (i.e. breaks, lunch, time off), balancing, cashiering or cash control, and inbound/outbound correspondence to the customer. The Employer does not object to the inclusion of these employees in the appropriate bargaining unit.

The record revealed that the Petitioner does not seek to include a staff assistant-customer operations in the proposed unit even though this classification is employed at the telephone center. The Employer, on the other hand, would include this employee in the unit contending that she shares a community of interest with the petitioned-for employees. The duties for the staff assistant-customer operations are similar to the clerk-telephone center with the added function of being the assistant to the manager. As assistant to the manager, this employee takes phone calls and messages for the manager, assists with scheduling and basically keeps track of the manager. When she has free time, the staff assistant supports the telephone center. The record is unclear as to how much time the staff assistant spends on her duties as assistant to the manager or on her duties supporting the telephone center.

Outlying Offices

In addition to the telephone center, the Employer maintains customer service representatives in outlying offices including Chelmont (El Paso), Fabens and Van Horn, Texas and Anthony, Hatch and Las Cruces, New Mexico. Telephone center Manager Eduardo Valdez previously oversaw all customer service representative employees on a systemwide basis. However, in 2003, exact date uncertain, Judy Kummrow, whose office is located at the Stanton Tower in El Paso, Texas, assumed responsibility for the outlying offices. Similar to the telephone center, employees in the outlying offices are classified as customer service representatives I, II and III. The job descriptions and duties for these employees are identical to the job descriptions and duties for the representatives at the telephone center, except that in the outlying offices customer service representatives sometimes have face-to-face contact with the customer whereas in the telephone center customer communication is by telephone or through correspondence.

The record revealed that approximately five customer service representatives are located in Fabens, five customer service representatives in Chelmont, fourteen customer service representatives in Las Cruces and two customer service representatives in Anthony. The Employer also employs one customer service lead employee in Van Horn and one customer service lead employee in Hatch. These employees perform the same job functions as the customer service representatives except that they are located in a remote office without the same support mechanism that is present in other offices and therefore require a higher-grade level. Neither party alleges that these customer service lead employees are supervisors under the Act. The Employer seeks to include all of these customer service representatives, including the two

lead employees, in any unit found appropriate while the Petitioner would not seek inclusion of these employees.

Customer Resource Unit

The customer resource unit is located four to five blocks from the telephone center and focuses on the Employer's small commercial or commercial operations. The Employer employs two hourly positions in the customer resource unit consisting of a staff assistant and a customer service representative III.

The staff assistant assists the supervisor and professional staff in providing customer care by entering data into the system. In addition, the staff assistant is responsible for planning, coordinating and performing administrative support functions on ongoing projects. Essential job functions include developing and maintaining various spreadsheets, preparing reports, charts and graphs, preparing and maintaining budget and accounting records, and ordering, storing, and inventorying offices supplies and equipment as needed.

The customer service representative III in the customer resource unit shares the identical job description as the customer service representatives in the telephone center, but specializes in providing customer care to commercial customers, especially new construction builders.

The record revealed that these two customer resource unit employees interact with commercial type customers. However, the record is unclear as to interchange and/or interaction between the two customer resource unit employees and the petitioned-for employees.

The Employer asserts that both the staff assistant and the customer service representative III should be included in any unit found appropriate while the Petitioner would exclude both these employees from the unit.

Revenue Collections

Under the Employer's organizational chart, the revenue collections area falls under the authority of Controller Wilson. The listed supervisor over revenue collections is B. Kilgore. The record revealed that the Employer employs approximately ten hourly employees including five clerk-remittance processing, one clerk-UAR/deposit, two consultant-credit collections II, one consultant-credit collections III, and one senior consultant-revenue protection. These collections employees communicate directly with customers over collections issues via outbound and incoming telephone calls.

The clerk-remittance processing employees are responsible for sorting and balancing customer payments, reconciling daily cash reports, preparing daily bank deposit and monthly ledger reports, and providing clerical support. They spend 97 percent of their time processing and inputting payments into customer accounts. These employees also provide assistance to customers by resolving complaints regarding payments.

The clerk-UAR/deposit position has two functions—deposits and bad debts. These employees are responsible for maintaining and collecting uncollectable accounts and for notifying and following up on all deposits by sending collection notices to delinquent customers. Job duties also include refunding deposit money, talking directly to customers regarding deposits and processing payments for customers with bad debts. If a customer, telephone representative or any customer service representative has an issue concerning a bad debt or deposit, they call the clerk-UAR/deposit.

The consultant-credit collections II employees are responsible for debting, collecting and recording of returned items; they are also responsible for the Level Payment Plan and reviewing all government and multiple accounts for correct billing and payments, including direct contact

with federal, state and local government agencies or businesses. These employees ensure that customers receive final bills by, *inter alia*, ascertaining forwarding addresses. They also collect on bad checks by inputting information into the system and calling the customer.

The consultant-credit collections III employee ensures appropriate collection activity is taken on delinquent accounts, identifies potential energy diversion situations, collects all monies due before authorizing the reconnect of service and locates the responsible party on accounts for which an application for service has not been received. The consultant-credit collections III employee specializes in the collection of major debt over a certain dollar volume. This employee also normally handles any debt associated with energy diversion.

The senior consultant-revenue protection employee specializes in bankruptcy collection and specialized deposit agreements. Duties include decreasing the Employer's exposure to monetary losses on a continuing basis through proactive measures, rendering technical assistance and specific direction to section employees regarding problem customers and/or accounts, providing leadership and guidance to section employees, including disseminating tasks, training new employees, and evaluating performance of assigned tasks. The record revealed that this employee works with legal documents such as letters of guarantee and irrevocable bank letters. This employee provides support to the telephone center and others who might need assistance on bankruptcy issues.

Community of Interest

Because the appropriateness of the petitioned-for unit is at issue, factors reflecting a community of interest must be considered. Here the record revealed that geographically, the telephone center is located on the 14th floor of the Stanton Tower in El Paso, Texas. The revenue collections group is on the 15th floor of the same building. The customer resource unit

is located in a different building in downtown El Paso, four to five blocks away. The Chelmont office is located in El Paso approximately ten to fifteen minutes from the telephone center. Fabens is located 45 minutes to an hour from the telephone center. Van Horn is located approximately two and a half hours from the telephone center. Hatch, Las Cruces and Anthony are all located in New Mexico. Anthony is approximately forty-five minutes from the telephone center. Las Cruces is approximately an hour from the telephone center and Hatch is approximately two hours from the telephone center. Further, all six home agents working out of the telephone center, live and work farther away from the telephone center than the Chelmont office. One home agent lives in New Mexico.

Although transfers between the telephone center and the outlying offices were common two years ago, the record is unclear as to when the last transfer between the telephone center and outlying offices occurred. The record, however, revealed that on occasion employees from the telephone center supplement the outlying offices and within the last month, one employee assisted at one of the outlying offices. In addition, the record revealed three permanent transfers from the telephone center to revenue collections within the last three to five years.

Telephone center employees interact, via telephone or email (Lotus Notes), with the outlying offices, revenue collection employees and other classifications of employees at issue in this proceeding. Although the extent of communication is unclear, the testimony reflects that this interaction with the outlying offices may occur on a daily basis in some cases and once or twice a week in other cases.

The customer service representatives at the outlying offices use the same skill set and have the same job description as the customer service representatives at the telephone center. The core skill set for all customer care employees is the ability to use the account receivable

system (ARC) which the Employer uses to track all accounts. All customer service representatives utilize the ARC approximately 80 percent of the time. In addition to the ARC, the Employer maintains other satellite or subsystems that feed the ARC system. For example, the Employer has a deposit and UAR subsystem that is utilized by the collections group and a remittance processing subsystem utilized by the remittance processing employees.

The Employer employs one trainer for the ARC who works at the telephone center. Although ARC training is usually held at the Stanton building, the evidence revealed that training has been conducted at the Chelmont office. Training on the subsystems is usually conducted on a one-to-one basis. Human resources also conducts training classes on phone etiquette, professionalism and similar issues that are open to all employees.

The Employer's human resources department manages the standardized companywide pay scales, disciplinary procedures, hiring procedures and evaluation procedures. The Employer's pay scale ranges from around N-4 to N-13. Although there are various gradations at each grade, the scale for a particular grade is the same regardless of the location of an employee. The record revealed that all of the at-issue employees are hourly, non-salaried positions. Discipline such as termination begins with the supervisor, is then reviewed by the manager, and then human resources, and finally by the legal department. Similarly, hiring is standardized with the human resources department overseeing the process. Although the individual department supervisor is involved, the entire process is reviewed by the human resources department. The evaluation process is also reviewed by human resources department. Again, the individual supervisors are responsible for the initial evaluation which is then used by the human resources department to reach a standardized number or ranking. This ranking and tier within the ranking

determines merit increases. The human resources department may revise the ranking if it is determined that one supervisor was overly-generous.

The record revealed that in each of the at-issue classifications, scheduling of employees is generally handled at the supervisory level. Employee requests for vacation or time off are generally handled at the supervisory level. Although the Employer maintains a standard 40-hour workweek, the general hours of operation vary. General hours for the telephone center are 7:00 a.m. to 7:00 p.m. while the hours of operation at the outlying offices are shorter and closer to 8:00 a.m. to 5:00 p.m.

Restructuring

The record revealed that as a result of changes in Texas law mandating utility deregulation, the Employer is currently involved in a restructuring process. The Employer is considering creation of a separate New Mexico division and a separate service company (Serv_Co) that would service both New Mexico and Texas. The Employer has not made a final determination on how it will restructure its operations including functions that overlap into both Texas and New Mexico such as customer care.

ANALYSIS

The Petitioner seeks a single-facility unit consisting of all full-time and regular part-time customer service representatives I, II, III and customer service-clerk-telephone center currently employed by the Employer at the telephone center. In contrast, the Employer contends that the petitioned-for unit is inappropriate because it excludes employees who share a community of interest with the petitioned-for employees. The Employer argues that a systemwide unit consisting of all customer care employees is appropriate and that the appropriate unit must include the staff assistant-customer operations at the telephone center, all customer service

representatives, including two lead personnel, located in outlying offices, the two customer resource unit employees, and the ten revenue collection employees.

Initially, I must determine whether to apply the systemwide utility industry presumption. Since the early days of the Act, the Board has held that in the public utility industry a systemwide unit is the optimal unit for bargaining. *See Celco Partnership, d/b/a Verizon Wireless*, 341 NLRB No. 63, slip op at 2 (2004). In creating the systemwide presumption, the Board essentially balanced employees' Section 7 rights to bargain collectively through representatives of their own choosing against the public's interest in the unbroken provision of necessary services. This balance makes the most sense when the petitioned-for employees are an integral part of the provision of the utility service such that a labor stoppage or dispute at one part threatens the ability of the whole to serve the public good.

In its brief, the Petitioner accurately cites *Michigan Bell Telephone Co.*, 192 NLRB 1212, 1213 (1971) and *Mountain States Telephone Co.*, 220 NLRB 516 (1975) as examples of cases where the Board has departed from the systemwide presumption in the public utility industry where the facility or office at issue provided services similar to those offered in the commercial sector. Recently, in *Verizon Wireless*, *supra*, the Board addressed whether the presumption of systemwide units for public utilities should apply to the wireless telephone industry and if so, whether the presumption should extend to units composed solely of sales employees employed in retail stores. Finding it unnecessary to determine whether a wireless telephone company is properly considered a public utility, the Board held that the systemwide public utility presumption did not apply to the retail store employees at issue. Significantly, the at-issue employees consisted of retail sales representatives (RSR) and assistant sales operations (ASO) employees. Among other things, RSRs were responsible for ensuring customer service,

activating customers' newly-purchased phones and processing customer transactions. ASOs' duties included providing customer service, answering incoming calls and updating customer accounts. The main function of the retail store operation was to sell wireless telephones and equipment and service the public. After determining that the systemwide presumption was inapplicable to the type of retail employees at issue, the Board applied the general community of interest standard to determine the appropriateness of the petitioned-for unit.

Although it is unclear whether the at-issue employees in the instant case are of the same type of retail employees considered by the Board in *Verizon Wireless*, I nevertheless find that the petitioned-for unit is inappropriate under either the systemwide utility industry presumption or the general community of interest standards.

Under a systemwide utility industry presumption, the Petitioner's proposed unit is presumptively inappropriate as the Employer is a public utility and the Petitioner seeks a less than systemwide unit. However, the systemwide preference is merely a presumption and does not foreclose the possibility of less sweeping units. *Verizon Wireless*, supra. The Board has found less than systemwide units appropriate in the public utility industry where the petitioned-for employees (1) work in an administrative subdivision or distinct service area of the utility; (2) enjoy a substantial community of interest sufficient to make less than systemwide bargaining feasible; and (3) have no history of bargaining on a broader basis. *Id.*

In its brief, the Petitioner contends that I should depart from the systemwide presumption and cites various cases exemplifying instances where the Board has found less than systemwide units appropriate in the utility industry. The Petitioner relies on, *inter alia*, *Texas Elec. Serv. Co.*, 261 NLRB 1455, 1458 (1982) where the Board found a less-than-systemwide unit appropriate where (1) there is no history of bargaining on a systemwide basis; (2) the proposed

unit encompasses a distinct administrative or geographical subdivision; (3) the employer invests substantial autonomy in supervisors at the unit level; and (4) no union seeks to represent employees in a larger unit.

Overall, I find insufficient evidence to depart from a systemwide unit. Significantly, the instant record evidence reflects a longstanding history of collective bargaining by the parties on a systemwide basis. From 1944 to the present, the Petitioner has represented a unit of employees on a systemwide basis. As recently as 2002, the Petitioner has sought to represent on a systemwide basis the same unit it now seeks to represent on a smaller scale. Although the Petitioner contends that deregulation in the utility industry will change the structure of the Employer, the evidence is inconclusive as to what effect deregulation and any anticipated restructuring will have on the Employer's operations. Notwithstanding any restructuring, it remains clear that the Petitioner currently represents at least one-third of the Employer's workforce on a systemwide basis. Coupled with the evidence of the high degree of overall control exercised by the Employer's centralized human resource department, systemwide disciplinary procedures, evaluation procedures, hiring procedures, pay scales and evidence of daily interaction between customer service personnel at the telephone center and the outlying offices as well as other at-issue employees, I find no compelling evidence to warrant a less than systemwide unit. Accordingly, I find the petitioned-for unit inappropriate.

Similarly, under general community of interest standards, I find the petitioned-for unit inappropriate because it does not share a separate and distinct community of interest from the remaining employees of this type. Under Section 9(b) of the Act, the Board has broad discretion to determine "the unit appropriate for the purposes of collective bargaining" in each case "in order to assure to employees the fullest freedom in exercising the rights guaranteed by the Act."

NLRB v. Action Automotive, Inc., 469 U.S. 490, 494-97 (1985); *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950) *enfd* 190 F.2d 576 (7th Cir. 1951). The Act does not require a unit to be the most appropriate unit or the only appropriate unit. The Act only requires that the unit be appropriate to ensure to employees the fullest freedom in exercising their rights under the Act. *Id.*

In determining an appropriate unit, the Board first examines whether the petitioned-for unit possesses a separate community of interest. *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). A variety of factors are involved in determining whether employees share a community of interest. The factors include, but are not limited to, the nature of employee skills and functions, common supervision, work situs, interchangeability and contact among employees, wages and benefits, and work conditions. *Harron Communications, Inc.*, 308 NLRB 62 (1992); *Boudreaux's Drywall, Inc.*, 308 NLRB 777 (1992). Further under general community of interest standards, it is well established that a single facility unit is presumptively appropriate for collective bargaining. *Bowie Hall Trucking*, 290 NLRB 41, 42 (1988). The presumption in favor of a single location may be overcome “by a showing of a functional integration so substantial as to negate the separate identity of the single-facility unit.” *Id.* Among the factors the Board examines in making this determination are “centralized control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; distance between locations; and bargaining history, if any.” *J & L Plate*, 310 NLRB 429 (1993). The burden is on the party opposing a single-facility unit to present evidence sufficient to overcome the presumption. *Id.*

If the petitioned-for unit is appropriate, then the inquiry into the appropriate unit ends. However, if the petitioned-for unit is not appropriate, the Board generally attempts to determine a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. *Overnite Transportation Co.*, 331 NLRB at 663; *see also Bartlett Collins, Co.*, 334 NLRB 484 (2001); *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967). If the petitioner indicates a willingness to proceed to an election in any unit found appropriate, alternative units may be considered. *Acme Markets, Inc.*, 328 NLRB 1208, 1209 (1999). The parties may suggest alternative units, but the Regional Director also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. *Overnite Transportation Co.*, *supra*.

Applying the above precedent and general community of interest standards, I find such a substantial community of interest between the petitioned-for employees and the customer service representatives in the outlying offices so as to mandate their inclusion in the appropriate unit. The record revealed that all customer service representatives I, II, III share identical job descriptions and essentially the same job functions. The two lead employees perform the same functions as the petitioned-for employees and no evidence was adduced that they possess Section 2(11) indicia. Although the geographic distance between the telephone center and the outlying offices can range up to 2 ½ hours apart, the evidence revealed that the Petitioner seeks to include home agents who are physically located, in some instances, as far or farther than most of the outlying offices. In addition, although the offices have separate front-line supervision with some discretion, the evidence revealed that the Employer maintains centralized control over labor relations and operations including a central human resources department and standardized wages, benefits and general work conditions. The record also revealed evidence of interchange between

employees and in some instances daily interaction between customer service representatives. Adding these factors to the party's longstanding bargaining history on a systemwide basis, I find that any appropriate unit must include the customer service representatives, including lead persons, located in the outlying offices. Accordingly, I find that the petitioned-for unit is inappropriate.

Because I have found the petitioned-for unit inappropriate and because the Petitioner has not expressly affirmed or denied a willingness to represent an enlarged unit, I must now determine the appropriate unit. The Employer contends that any appropriate unit must include the staff assistant-customer operations located at the telephone center, all customer service representatives, including two lead personnel, located in outlying offices, the two customer resource unit employees, and the ten revenue collection employees. Regarding the staff-assistant-customer operations, the record revealed that her job is to assist the manager. When she has free time, the staff assistant-customer operations supplements the telephone center. However, the Employer failed to provide evidence as to how much time this employee spends on her duties to the manager or on her duties supporting the telephone center. I find the evidence insufficient to mandate her inclusion in the appropriate unit found herein.

Similarly, while there is evidence of employee interaction, similarity in basic skills and overall standardized work conditions between the petitioned-for unit and the two customer resource unit employees (including the staff assistant and customer service representative III) and the ten revenue collections employees, the evidence revealed that their job duties, skills and functions differ from the telephone center customer service representatives. The customer resource employees primarily work with the Employer's commercial operations and professional level staff working on spreadsheets such as summary billing programs and specialize in areas

such as new commercial builders. No evidence was offered to show the level of interaction or interchange with the telephone center. Similarly, the revenue collections employees have different skills, duties and functions and perform collections work and specialize in areas such as payment or remittance processing, deposits and bad debts, final bills and bad checks, high dollar collections and debt associated with energy diversion, and bankruptcy. Based on these differences, I conclude that the appropriate unit must include all customer service representatives, I, II, III, including home agents, located at the telephone center, customer service representative-clerk-telephone center, and customer service representatives I, II, III, including the two lead employees, located in the Employer's outlying offices.

Finally, the Petitioner seeks a self-determination election pursuant to the *Armour-Globe* doctrine. The Petitioner essentially contends that unrepresented customer service representative employees should be granted a self-determination election to establish whether they wish to be included in the bargaining unit currently represented by the Petitioner or remain unrepresented. In a partially organized setting, such a group of unrepresented employees is commonly referred to as a fringe or residual group of employees. As set forth in *Syracuse University*, 325 NLRB 162, 167 (1997), in which the Board adopted the Regional Director's findings, groups of employees omitted from established bargaining units constitute appropriate residual units, provided they include all the unrepresented employees of the type covered by the petition. The Board requires that all unrepresented employees residual to an existing unit or units be included in an election to represent them on a residual basis. *Id.*

Here the record discloses that the petitioned-for employees are primarily engaged in customer service or customer care duties. However, in addition to the petitioned-for employees, the Employer employs at least an additional twenty-seven employees, including two lead

persons, in outlying offices who are engaged in customer service or customer care duties. Thus, I find that the petitioned-for employees do not constitute an appropriate residual unit inasmuch as only a portion of the remaining unrepresented customer service employees are sought by the Petitioner. Accordingly, I find an *Armour-Globe* election inappropriate. As previously stated, I have determined the appropriate unit to include all customer service representatives, I, II, III, including home agents, located at the telephone center, customer service representative-clerk-telephone center, and customer service representatives I, II, III, including the two lead employees, located in the Employer's outlying offices. Should the Petitioner not wish to represent these employees on a separate basis, I will dismiss the petition herein pursuant to established Board precedent. *Syracuse University*, 325 NLRB at 167 fn 12; *Oakwood Hospital Corp.*, 219 NLRB 620 (1975).

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated, and I find, that the Employer, El Paso Electric Company, is a public utility incorporated in the State of Texas, where it generates, transmits and distributes electricity. During the preceding twelve months, a representative period, the Employer derived gross revenues in excess of \$1,000,000 and during that same period, purchased and received goods and materials valued in excess of \$50,000 directly from points located outside the State of Texas. Based on the foregoing, I find the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner claims to represent certain employees of the Employer.
4. The parties stipulated to the Petitioner's labor organization status.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and regular part-time customer service representatives I, II, III and customer service-clerk-telephone center employed by the Employer at the telephone center at 100 N. Stanton, El Paso, Texas and the outlying offices including Chelmont, Fabens and Van Horn, Texas and Anthony, Hatch and Las Cruces, New Mexico.

EXCLUDED: All office clerical employees, professional employees, guards and supervisors as defined in the Act and all other employees.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Electrical Workers, Local 960.

The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees

engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the

voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

Inasmuch as I have found appropriate a broader unit than that sought by the Petitioner, I have determined that the Petitioner already possesses an adequate showing of interest among the employees in the unit found appropriate. Should the Petitioner not wish to proceed to an election in a broader unit, it will be permitted, upon request, to withdraw its petition without prejudice.

To be timely filed, the list must be received in the Regional Office, 819 Taylor Street Federal Office Building, Rm. 8A24 Fort Worth, Texas 76102 on or before **May 18, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 817-978-2928. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. ***Club Demonstration Services***, 317 NLRB 349 (1995). Failure to do so estops employers from filing

objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST **on May 25, 2004**. The request may **not** be filed by facsimile.

Dated: **May 11, 2004**

/s/ Curtis A. Wells
Curtis A. Wells, Regional Director,
National Labor Relations Board
Region 16
819 Taylor Street - Room 8A24
Fort Worth, TX 76102